

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 16 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

UMIYA DAIRY

Appearance:

MR SP DAVE, ADDITIONAL PUBLIC PROSECUTOR for Petitioner
MR BN RAVAL for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/03/2000

ORAL JUDGEMENT

1. This appeal arises from the impugned judgement and order of acquittal dated 25th September, 1991 rendered by the learned Judicial Magistrate (First Class), Visnagar in Criminal Case No.1254 of 1988. The

respondent faced charge of having committed offence punishable under Section 7(1) read with Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (PFA Act for short) on the ground that the cow milk sample taken

from the shop of the accused was ultimately found to be not according to the prescribed standard. The Learned Magistrate has rendered acquittal on the ground that the prosecution failed to prove required procedure of taking of sample of milk. The complainant as well as the Panchanama Exhibit 39 do not state about the stirring of the milk before taking of sample therefrom. For verifying this factual aspect, Mr. S.P. Dave, learned APP read the evidence and the judgement of the trial court. It would appear from the report of the Public Analyst that although minimum standard for milk fat is 3.5%, the sample disclosed milk fat to the extent of 6%. However, the minimum standard for milk solid not fat being 8.5%, the sample disclosed 6.24%. That is how there was violation of standards canvassed by the prosecution before the trial court. It would appear from the evidence that there is vital lacuna with regard to taking of sample i.e. with regard to stirring of milk from which the sample was taken. As the aforesaid Panchnama as well as the complainant do not mention following of such a procedure, and upon appreciation of evidence, the finding of fact rendered by Learned Magistrate in this regard cannot be faulted. In the result, this appeal fails. The same is accordingly dismissed.

(M.S. Parikh, J.)

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